IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO.1002 OF 2003
IN
SUMMARY SUIT NO. 1779 OF 2003

M.M. Popat : Plaintiff

v/s

M/s. Shah Lakhamshi Parbat & co.& ors : Defendants

H.V. Chande for plaintiff
M.J. Devaki for defendant no. 6 and 7
Ms. J.P. Thakkar for defendant no.2
None for defendant nos. 1 and 3 to 5

Coram : R.S. Dalvi,J
Date:3.7.2008

P.C.

1. The plaintiff has filed this summary suit on a writing executed by the defendants on 1.6.2000 in respect of sum of Rs. 1 lakh received by the defendants from the plaintiff in cash on interest. A writing states that the defendants have borrowed the said sum on interest. It specifies that interest to be paid is at 1.50% p.m. and the defendants have given his receipt for the same. The receipt is signed by defendant no. 7 who was the partner of defendant no.1 firm.

2. The writing shows an agreement to pay Rs. 1 lakh with interest at 1.5% p.m.thereon. The agreement for payment of interest specifically recited in writing and the fact that the principal amount was

borrowed from the plaintiff shows that there was a promise to re pay that amount. Such promise to re pay is implied in a written contract. The contract is written contract with the promise to repay being implied therein. The promise to repay is for the principal amount as well as specified amount of interest.

3. It is contended that the summary suit does not lie on such a writing/contract/ receipt. The full bench judgment of this court in the case of Jyotsna K. Valia v/s. T.S. Parekh & co. in 2007(3) BCR 772 has held that the maintainability of the summary suit on a writing or receipt would depend on the document itself. The practise, usage and customs, of the trade as also the facts of each case.

4. In this case the writing is clear. It specifies the liquidated principal amount. It shows the payment of interest at the specified amount. It further shows that the amount is borrowed on that date. The writing bears the date, the stamp and the signature of the partner of the firm on whose behalf the partner signed. The writing therefore shows an agreement to pay. Summary suit is maintainable on such agreement.

5. Defendant no.7 was admittedly the partner of defendant no.1 firm. Each partner binds the firm. Each of the partners are,therefore,liable for the debt of the firm incurred by one of them.

6. The suit is filed against the defendant no.1 firm as well as against the partners. The writ of summons has been served upon all the partners i.e. defendant no. 2 to 7. The writ of summons is yet not served upon the firm on the ground that partners have not accepted on behalf of the firm on the premise that the firm had been dissolved. The plaintiff shall serve the summons by substituted service upon last known address of defendant no.1 firm. Mr. Chande states that the plaintiff shall serve the summons which has yet remained while the other defendants have been served. All the defendants have entered appearances and filed reply to the S/Js.

7. The main defense is that the firm is dissolved. Each of the partners of the dissolved firm are liable for the debts and liabilities of the firm as a going concern. The liability continues after dissolution. Hence it does not matter that the firm has been dissolved after the debt is incurred.

8. The writing/reeipt Ex. A to the plaint is dt. 1.6.2000. The firm has been dissolved on 10.1.2001. It is therefore the debt and liability of the dissolved firm.

9. Defendant no.2 has contended that he joined the firm with effect from 16.11.1999 as per the extract of registrar of firms. That shows that he was the partner on the date the receipt was executed and the debt was incurred by one of the partners on behalf of the firm. He is, therefore, equally liable as partner to third parties.

10. Defendant no. 2 has relied upon the deed of partnership in which it is agreed that none of the partners will borrow money in the name of partnership firm without consent of other partners in writing. He, therefore, contends that no partner other than defendant no. 7 is liable upon the receipt dt. 1.6.2000. The Partnership deed shows the agreement between the partners with which third parties are not concerned. It is for the partners other than defendant no. 7 to claim loss or damage incurred by the firm on account of the act of defendant no. 7. The act of defendant no. 7 is seen to be in the

normal course of the business of the firm. It therefore binds the firm as well as the other partners.

11. It is contended on behalf of all the defendants that the signature of defendant no. 7 does not appear to be like the signature of defendant no.7. If that defense is taken it is for the defendants to show the specimen signature of defendant no.7 and substantiate their defense that the signature on the document is not of defendant no.7 or that the document is forged. The case of other defendants goes no further. It is pertinent to note that defendant no.7, though represented by the advocate who represents defendant no.6 also, has not filed affidavit in reply. The affidavit in reply of the defendant no.7 is the most material affidavit, since defendant no.7 was admittedly the partner and has signed the said writing/ receipt. That affidavit not being filed, no substantial defense on merits is seen with regard to execution of the document by defendant no.7 as a partner on behalf of the firm of defendant no.1 which was a going concern at the time of transaction.

12. It is contended that the plaintiff is a money lender. The plaintiff has lent and advanced and

defendants have borrowed the amount reflected in the document on behalf of the firm. It is therefore an advance made for business purpose.

13. The plaintiff has mentioned accounts. He has relied upon his cash book and ledger maintained by him in affidavit in the rejoinder. The transaction is not hit by the Bombay Money Lenders Act 1946.

14 . There is no substantial defense to the suit. Summons for judgment is made absolute as prayed against defendant no. 2 to 7. Suit decreed accordingly against defendant no. 2 to 7.

15. The defendants apply for the stay of decree for 8 weeks. Since the decree itself is passed the suit stands disposed of. The decree has to be executed. Application for stay is rejected.

(R.S. Dalvi,J.)